

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	No. 13-151-RCC
vs.)	
)	ORDER APPROVING
UNITED STATES FISH AND WILDLIFE)	STIPULATION MODIFYING
SERVICE and UNITED STATES FOREST)	INJUNCTION
SERVICE,)	
)	
Defendants.)	
_____)	

Being fully advised in the premises, the Court hereby APPROVES the parties' Stipulation to Modify Injunction filed on July 22, 2020. Pursuant to that stipulation of the parties, which is attached hereto, the Court hereby MODIFIES the injunction put in place by its September 12, 2019 Order to except the following specifically enumerated activities from the injunction:

1. Projects set out on Attachment 1 to the July 22, 2020 stipulation which are outside of Mexican spotted owl critical habitat and Mexican spotted owl Recovery Habitat, and

2. Those portions of the projects set out on Attachment 2 to the July 22, 2020 stipulation which are outside of Mexican spotted owl critical and Mexican spotted owl Recovery Habitat.

United States District Judge

Steven Sugarman
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appearing *pro hac vice*
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WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	No. 13-151-RCC
vs.)	
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UNITED STATES FISH AND WILDLIFE)	STIPULATION TO
SERVICE and UNITED STATES FOREST)	MODIFY INJUNCTION
SERVICE,)	
)	[Expedited consideration requested]
Defendants.)	
_____)	

The parties to this action hereby stipulate to a further modification of the Court's September 12, 2019 injunction in this matter that "timber management actions in Region 3 national forests must cease pending formal consultation." ECF Doc. No. 89 at 39. The parties respectfully request that the Court approve this stipulation and enter it as Order of the Court.

Currently pending before the Court are the Federal Defendants' Motion to Alter the Court's Decision and to Clarify or Modify the Court's Injunction and the Federal Defendants' motions to dissolve the injunction. ECF Docs. Nos. 104, 112, 126. Pending the Court's resolution of these motions, the parties agree and stipulate that the timber management activities specifically identified on Attachment 1 and Attachment 2 to this Stipulation should be permanently excepted from the Court's injunction. The projects enumerated on Attachment 1 are outside of Mexican spotted owl critical habitat and Recovery Habitat. Insofar as the Attachment 2 projects are concerned, the parties stipulate only to implementation of those portions of those projects that are outside of Mexican spotted owl critical habitat and Recovery Habitat.

The parties further stipulate that their execution of this stipulation is intended solely to achieve the prompt release of the above projects from the current injunction in this case. By executing this stipulation, the parties do not concede or compromise any claim or defense set out in or arising from the Federal Defendants' currently pending motions. Motion to Alter the Court's Decision and to Clarify of Modify the Court's Injunction. Rather, this stipulation is a memorialization of the parties' limited agreement with respect to the specifically enumerated projects set out on Attachment 1 hereto.

Dated: July 22, 2020.

Respectfully submitted,

For the Plaintiff:

/s/ Steven Sugarman
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Stipulation to Modify was served on counsel of record on July 22, 2020 through the Court's electronic CM-ECF system.

/s/ Steven Sugarman
Steven Sugarman

ATTACHMENT 1
Awarded Projects Outside Habitat

Forest	District	NEPA Project Name	Treatment Project Name	Project Type	Awarded (yes/no)	MSO Habitat - Recovery or Restricted (Yes/No)	MSO Habitat -PACs/nest roost (Yes/No)	Total Acres in Project	Total acres in Recovery or Restricted Habitat	Total Project Acres in PACs	Total acres in nest roost or threshold	May Affect Not Likely/No Affect	Owl Survey current including 5 year	Forest Comments
Tonto	payson	myrtle	diamond nickel 13T stewardship project	Stewardship contract mechanical thinning	yes	no	no	693	0	0	0	may affect not likely to adversely affect	N/A Suitable nest/roost habitat to support nesting owls is not present in this specific project area. Work will also be completed outside the breeding season.	NEPA identified 52 ac of target habitat within project, however field verification identified < 10 BA QUGA in the 2 areas. Therefore these areas do not meet the definition of restricted (target) habitat; The PAC designation was removed in 2019 from 2 nearby MSO PACs (Oak Springs and Roberts Draw) because the original PAC designation did not meet the "owl site" criteria; this project is necessary for TriStar Logging to move to the tonto in the fall/winter of 2020
Tonto	payson	myrtle	michellison 13T stewardship project	Stewardship contract mechanical thinning	yes	no	no	444	0	0	0	may affect not likely to adversely affect	N/A Suitable nest/roost habitat to support nesting owls is not present in this specific project area.	this project is necessary for TriStar Logging to move to the tonto in the fall/winter of 2020
Gila	Quemado	Divide Woodland Thinning	Divide Commercial Fuelwood	Commercial Fuelwood	yes	no	no	140	0	0	0	No Effect	None needed, no habitat.	verified not habitat. 100 acres active as allowed by Attachment 5.
Gila	Reserve	Burro EA	Fish Commercial Fuelwood	Commercial Fuelwood	yes	no	no	412	0	0	0	May Affect Not Likely	None needed, no habitat.	Verified Not Habitat. 172 acres active as allowed by Attachment 5.
Carson	Tres Piedras	RTLSA	American Creek Cut/Skid/Deck - Sale of Commercial Decks	Commercial Fuelwood	partially awarded - 1 sale awarded of many	No	No	430	0	0	0	N/A - No Hab	N/A - No Hab	Sale of Decks after service work completed
Carson	El Rito	El Rito Canyon LRP	ERC NMDGP Thinning Agreement	Agreement - Service Contract	Yes	No	No	1175	0	0	0	NLAA	N/A - No Hab	Thinning, lop and scatter
Carson	Questa	Kiowa-San Cristobal WUI EA	TVWC Joint Chiefs Thinning	Thinning - Agreement with NMFIA	Yes	No	No	350	0	0	0	N/A - No Hab	MSO Surveys Valid trhu 2024	Thinning, harvesting, lop and scatter, piling
Carson	Questa	Highway 150 Corridor CE	Rocky Mountain Youth Corps Thinning	Agreement - Contract through RGWF	Yes	No	No	8	0	0	0	NLAA	MSO Surveys Valid trhu 2024	Thinning, piling, lop and scatter
Carson	Tres Piedras	Cerro Azul Grazing Allotment	Cerro Azul RCPP Thinning	Agreement w/ NRCS, SWCD and Permittees Thinning	Yes	No	No	50	0	0	0	N/A - No Hab	N/A - No Hab	Piñon/Juniper Thinning and Lop and Scatter
Cibola	Mt Taylor	Puerco	McQue 1 & 2	Mechanical Thinning	Yes	No	No	780	0	0	0	No Affect	Yes	All acres located out of Pine Oak and Mixed Con Habitat.
Cibola	Mt Taylor	Puerco	McGaffey 1-4, Continetal Divide 2	Mechanical Thinning	Yes	No	No	996	0	0	0	No Affect	Yes	Potential habitat surveyed, resurvey 2023. Pure ponderosa pine managed as developing old growth.
Cibola	Mt Taylor	Bluewater	Northwest and Peavine	Thinning/ Fuelwood	Yes	No	No	988	0	0	0	No Affect	No	Area verified by forest Wildlife biologist to not have MSO habitat.
Cibola	Mt Taylor	East La Jara Pinyon-Juiper Restoration	East La Jara Phase 3 NRCS EQUIP	Thinning/Fuelwood	Yes	No	No	230	0	0	0	No Affect	N/A	Verified No Habitat by District Biologist.
Gila	Wilderness	Upper Mimbres	Gattons Park CFRP Unit 7	Commerical Thin	yes	no	no	11	0	0	0	May Affect Not Likely	Yes	Unit 7 outside of MSO habitat
Lincoln	Sacramento	EA-Westside CFRP	Laborcita	Fuels Reduction	Yes	No	No	165	0	0	0	No Affect	No	Watershed restoration project
Lincoln	Sacramento	EA-Westside CFRP	Maruchi	Fuels Reduction	Yes	No	No	58	0	0	0	No Affect	Yes	Watershed restoration project
Lincoln	Sacramento	EA-Westside CFRP	La Luz	Fuels Reduction	Yes	No	No	112	0	0	0	No Likely	No	Watershed restoration project
Santa Fe	Coyote	Cordovas	Padilla CFRP	CFRP	yes	yes with cordovas nepa no within remaining acres of CFRP project	no	142	356 in cordovas nepa 120 in project area which has been treated	none	none identified in nepa project boundry or cfrp project boundary	-	no	
Santa Fe	Pecos/Las Vegas	Rowe Mesa CFRP	Rowe Mesa CFRP	CFRP	YES	NO	NO	600	0	0	0	NE	NA	NE due to no habitat
Carson	Camino Real	La Acequia de la Cuchilla CE	La Acequia de la Cuchilla Conifer Removal	Thinning/Piling	Yes	No	No	5	0	0	0	N/A - No Hab	N/A - No Hab	Thinning, harvesting, lop and scatter, piling
Carson	Canjilon	Canjilon WUI	Canjilon WUI NMSF WIP Phase 3 Thinning	Agreement - Service Contract	Yes	No	No	1000	0	0	0	N/A - No Hab	N/A - No Hab	Thinning, lop and scatter
Carson	Canjilon	Canjilon WUI	Montoya Rx Line Prep	Prescribed burning line prep contract	Yes	No	No	40	0	0	0	N/A - No Hab	N/A - No Hab	Handline Construction, thinning trees less than 4.0" DBH
Carson	Canjilon	Canjilon WUI	Blas Rx Line Prep	Prescribed burning line prep contract	Yes	No	No	25	0	0	0	N/A - No Hab	N/A - No Hab	Handline Construction, thinning trees less than 4.0" DBH
Carson	Questa	Valle Vidal Northeast CE	McCrystal Rock Rx Line Prep	Prescribed burning line prep contract	Yes	No	No	35	0	0	0	N/A - No Hab	N/A - No Hab	Handline Construction, thinning trees less than 4.0" DBH
Cibola	Mt Taylor	Bluewater EA	Diener Hazard Tree 1 and 2/ Sawyer/Diener Latillas	mechanical vegetation removal	Yes	No	No	15	0	0	0	No Affect	No	Confirmed with District Biologist area is not in habitat. Letter to the file provided.
Gila	Black Range	Road Maintenance CE	Black Range RD Hazard Tree Removal (4 small operators)	Incidental Tree Falling/removal of hazard trees	Yes	No	No	N/A	0	0	0	No Effect	None needed, no habitat.	High priority on Black Range District - currently has marked timber bought under personal use permit. Currently does not have options for products.
Gila	Reserve	Burro EA	RMEF Collin's Park Grassland Thin	Hand Thinning	yes	no	no	100	0	0	0	May Affect Not Likely	None needed, no habitat.	Not Habitat - within grassland
Gila	Wilderness	Upper Mimbres	Gattons Park Unit 12A & 13	Commercial Thin	yes	no	no	35	0	0	0	May Affect Not Likley	N/A	Unit 12A & 13 already randomly sampled stands, do not meet recovery habitat definition
Santa Fe	Cuba	Moya	Moya Thinning Project	Service Contract	Yes	No	No	587	0	0	0	NA	N/A Not habitat	Burden to industry - awarded contract that cannot be completed.
Tonto	Pleasant Valley	Chamberlain	Chamberlain Mastication Project	mastication	yes	no	no	100	0	0	0	MANLAA	N/A Suitable nest/roost habitat to support nesting owls is not present in this specific project area. Work will also be completed outside the breeding season.	field verified that the 2 mastication units contain average of 3 BA and 6 BA of QUGA and therefore are not MSO restricted habitat; Consultation for Chamberlain EA expired and is being reinitiated with USFWS; this project is located within the Rim Country project area, which is currently undergoing consultation with USFWS
Tonto	payson	payson WUI	crackerjack road emory oak restoration project	mastication	yes	no	no	56	0	0	0	may affect not likely to adversely affect	N/A	this project is being done in collaboration with the apache tribes (White Mountain, Yavapai, Tonto, Gila River) and is funded by Resolution Copper. Emory oak acorns are an important traditional food source for the Apache Tribes. They are very upset that implementation of this project is being held up.
tonto	payson	pine strawberry	pine strawberry fuelbreak maintenance thinning	hand thinning	yes	no	no	3814	0	0	0	may affect not likely to adversely affect	n/a	This project is the hand thinning of fuelbreaks directly adjacent to private property in Pine and Strawberry. The fuelbreaks have already been cut in previous years. This is just the maintenance of these fuelbreaks. The project involves the hand thinning of resprouting juniper, evergreen oaks, and brush
tonto	payson	pine strawberry	deadman mesa mastication project	mastication	yes	no	no	1445	0	0	0	may affect not likely to adversely affect	n/a	
tonto	payson	pine strawberry	south buckhead mastication project	mastication	yes	no	no	1075	0	0	0	may affect not likely to adversely affect	n/a	under contract
Totals								16116						

ATTACHMENT 2
Awarded Projects Partially Outside Habitat

Forest	District	NEPA Project Name	Unit Project Name	Project Type	Awarded (yes/no)	MSO Habitat - Recovery (Yes/No)	MSO Habitat -PACs/nest roost (Yes/No)	Total Acres in Project	Total acres in Recovery or Restricted Habitat	Total Acres Outside Habitat	Total Project Acres in PACs	Total acres in nest roost or threshold	May Affect Not Likley/No Affect	Owl Survey current including 5 year	Forest Comments
Santa Fe	Coyote	Cordovas	Cordovas	Service Work Machine Pile	yes	Yes		157	75	82	0	0			This contract has been awarded(2019) to Summit Forests Inc. Inability to proceed may have negative financial effects to the contractor as-well-as the agency.
tonto	payson	myrtle payson and verde Eas	myrtle payson verde maintenance thinning	hand thinning	yes	yes	0	1404	150	1254	0	0	Payson and Myrtle- may affect not likely to adversely affect; Verde - may affect likely to adversely affect	N/A Suitbale nest/roost habitat to support nesting owls is not present in this specifc project area. Work will also be completed outside the breeding season.	this project is the hand thinning of fuelbreaks directly adjacent to private property. The fuelbreaks have already been cut in previous years. This is just the maintenance of these fuelbreaks. The project involves the hand thinning of resprouting juniper, evergreen oaks, and brush
Carson	Tres Piedras	Maquinita Ecosytem Health Project	Willow IRTC	Timber Sale	Yes	Yes	No	1,416	845	571	0	0	NLAA	MSO Surveys valid thru 2021. Resurvey being conducted in 2021; once completed resurvey will be valid thru 2026	Original acreage is 1,416
Santa Fe	Jemez	SWJM	Redondo Task Order	IRSC	Yes	No	No	740	192	548	0	0	MALAA	Yes	Necessary to keep TC company working through winter CY20/21.
Carson	Tres Piedras	RTLSA	American Creek NMDGF Thinning Agreement	Agreement - Service Contract	Yes	Yes	No	412	80	332	0	0	NLAA	MSO Surveys Valid thru 2024	Thinning, lop and scatter
Carson	El Rito	Agua/Caballos	Andy Chacon CFRP	Agreement - Thinning	Yes	Yes	No	319	227	92	0	0	NLAA	MSO Surveys Valid thru 2023	Thinning, lop and scatter
Totals								4448	1569	2879	0	0			